

REMARKS

This amendment is responsive to the non-final Office Action dated June 18, 2007. In the Office Action, Claims 10-29 were rejected by the Examiner.

By way of this amendment, Claims 10, and 26-29 have been currently amended. Claims 11-25 are not amended. Claims 1-9 were previously canceled.

Accordingly, Claims 10-29 are currently pending and are believed to be in condition for allowance.

ONE MONTH EXTENSION OF TIME

Applicant requests a one month extension of time for filing a response to the Office Action. The required fee for the extension of time is submitted herewith.

DRAWINGS

The Examiner has objected to the drawings for not showing every feature of the invention specified in the claims. The Applicant, per Examiner's suggestion, has canceled the "to external circuitry" language from Claims 26-29. Therefore, the drawings show every feature of the invention as specified in the claims. Applicant respectfully requests that drawings be accepted without objection.

ABSTRACT

The Examiner has requested a new Abstract that is legible, larger font, and not containing extraneous material. The Applicant submits the Abstract below which has the same content as the original Abstract but is now in condition suitable for the Examiner.

New Abstract

Apparatus for assessing the condition of fruit or vegetables comprises a transducer (22) which is brought into contact with the surface of fruit or vegetable (12) in a tapping motion. The transducer (22), where it contacts the fruit or vegetable's surface is generally curved in shape to ensure accuracy of measurement over a relatively wide range of angles of impact with the fruit or vegetable (12). The transducer (22) can be delivered to and away from the fruit or vegetable surface by an air controlled bellows arrangement.

REJECTION OF CLAIMS UNDER 35 U.S.C. 112

Claims 26-27 are rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as invention. The Examiner has rejected Claims 26 and 27 because there is no proper antecedent for "said damping member".

Per the Examiner's suggestion, the Applicant has amended Claim 26 and Claim 27 to read "a damping member" to correct antecedent issue. Applicant believes that Claims 26 and 27 are now in condition for allowance.

REJECTION OF CLAIMS UNDER 35 U.S.C. §102 (b)

Claims 10-15 and 22-29 are rejected under 35 USC §102(b) as being anticipated by Briggs WO 98/52037, cited in the IDS. The Applicant respectfully submits that Claims 10-15 and 22-29 are not anticipated by Briggs as amended below.

Claim 10 has been presently amended to read the following:

... said plunger carrying a transducer at a distal end thereof which is brought into contact with an item of fruit or vegetables ... wherein ~~at least a part of said plunger~~ said transducer which contacts said item of fruit or vegetables is ~~of generally~~ in shape.

In contrast to Briggs (Figs. 17-19), the present invention has a transducer located at the distal end of the plunger as shown in Figure 1. The present invention has the transducer mounted on the distal end and exterior of the plunger. In contrast, Briggs has a transducer mounted within the interior of the plunger in its middle portion. By having the transducer mounted on the distal end of the plunger, it results in more accurate measurement of the item of fruit.

In addition, the present invention has a transducer which contacts said item for fruit along its curved portion. [Paragraph 16] More importantly, the transducer is curved in shape which allows for good measurements that can be achieved over a range of angles, not just perpendicular, of contact with randomly curved surfaces of the fruit or vegetable. To emphasize this point, "Of generally" was deleted and replaced with "in" to reiterate the curved shape of the transducer derives significant benefits.

Another difference between the present invention and Briggs is that the transducer and the slug are incorporated on a single device. As shown in Fig. 1 of the present invention, the transducer and slug form a unitary structure. As shown in Fig. 18 of Briggs, the transducer is a separate component mounted within the interior of the slug. Based upon the arguments above, Briggs does not recite all the elements of the present invention.

Claim 10 is in condition for allowance based upon the amendments above. Since Claims 11-15 and 22-29 depend from independent Claim 10, Claims 11-15 and 22-29 are also in condition for allowance. Accordingly, withdrawal of this rejection for Claims 10-15 and 22-29 is respectfully requested.

#### REJECTION OF CLAIMS UNDER 35 U.S.C. §103 (a)

Claims 16-21 are rejected under 35 U.S.C. §103 (a) as being unpatentable over Briggs, in view of Croschier US Patent Number 2,784,595. The Applicant respectfully submits that Claims 16-21 are not obvious in light of Briggs in view of Croschier.

As discussed above, Briggs does not disclose all the elements of Claim 10. Without Briggs as a prior art reference, Croshier cannot combine with Briggs for an obviousness rejection of Claims 16-21 under 35 U.S.C. §103 (a).

Furthermore, Croshier does not teach or suggest Claims 16-21 of the present invention. Croshier relates to a snap linear gage having a dial indicator with a hemispherical measuring contact. Croshier does not teach or suggest using a transducer with a curved shape for contacting fruit and vegetables for more accurate measurement.

Based on the foregoing comments, Claims 16-21 are believed to be in condition for allowance over Briggs in view of Croshier. Claims 16-21 depend from Claim 10. Since Claim 10 is believed to be in condition for allowance, Claims 16-21 are also believed to be in condition for allowance. Accordingly, withdrawal of this rejection for Claims 16-21 is respectfully requested.

#### CONCLUSION

Accordingly, claims 10-29 are believed to be in condition for allowance and the application ready for issue. Corresponding action is respectfully solicited.

The Director is authorized to charge any additional fees incurred as a result of the filing hereof or credit any overpayment to our Deposit Account Number 02-0900.

Respectfully submitted,  
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